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SENATE BILL NO. 574

Offered January 12, 2022

Prefiled January 12, 2022

A *BILL to amend and reenact § 22.1-289.035 of the Code of Virginia, relating to child care; background checks.*

Patron—Mason

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-289.035 of the Code of Virginia is amended and reenacted as follows:

§ 22.1-289.035. Licensed child day centers, family day homes, and family day systems; employment for compensation or use as volunteers of persons convicted of or found to have committed certain offenses prohibited; national background check required; penalty.

A. No child day center, family day home, or family day system licensed in accordance with the provisions of this chapter, child day center exempt from licensure pursuant to § 22.1-289.031, registered family day home, family day home approved by a family day system, or child day center, family day home, or child day program that enters into a contract with the Department or its agents or designees to provide child care services funded by the Child Care and Development Block Grant shall hire for compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with, in control of, or supervising children any person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants for employment, employees, applicants to serve as volunteers, and volunteers shall undergo a background check in accordance with subsection B prior to employment or beginning to serve as a volunteer and every five years thereafter. *However, pending the results of all background check components set forth in subsection B, an applicant for employment or an applicant to serve as a volunteer may work in the child day center, family day home, or family day system, provided that (i) the applicant has received qualifying results on a fingerprint-based background check through the Central Criminal Records Exchange or the Federal Bureau of Investigation and (ii) the applicant is supervised at all times by a person who received a qualifying result on a background check conducted in accordance with subsection B within the past five years.*

B. Any individual required to undergo a background check in accordance with subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth and whether he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of § 19.2-392.02;

3. Authorize the child day center, family day home, or family day system described in subsection A to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect against him; and

4. Authorize the child day center, family day home, or family day system described in subsection A to obtain a copy of the results of a criminal history record information check, a sex offender registry check, and a search of the child abuse and neglect registry or equivalent registry from any state in which the individual has resided in the preceding five years.

The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded by the Department or its designee or, in the case of a child day program operated by a local government, may be forwarded by the local law-enforcement agency through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department or its designee, and the Department or its designee shall report to the child day center or family day home whether the applicant is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department or its designee is lacking disposition data, the Department or its designee shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data before reporting to the child day center, family day home, or family day system.

C. The child day center, family day home, or family day system described in subsection A shall inform every individual required to undergo a background check pursuant to this section that he is

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59 entitled to obtain a copy of any background check report and to challenge the accuracy and
60 completeness of any such report and obtain a prompt resolution before a final determination is made of
61 the individual's eligibility to have responsibility for the safety and well-being of children.

62 D. Any person making a materially false statement regarding the sworn statement or affirmation
63 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

64 E. Further dissemination of the background check information is prohibited (i) other than to the
65 Superintendent's representative or a federal or state authority or court as may be required to comply with
66 an express requirement of law for such further dissemination or (ii) except as provided in subsection J.

67 F. A person who complies in good faith with the provisions of this section shall not be liable for any
68 civil damages for any act or omission in the performance of duties under this section unless the act or
69 omission was the result of gross negligence or willful misconduct.

70 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
71 employment persons who have been convicted of not more than one misdemeanor offense under
72 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
73 elapsed following the conviction, unless the person committed such offense while employed in a child
74 day center or the object of the offense was a minor.

75 H. Fees charged for the processing and administration of background checks pursuant to this section
76 shall not exceed the actual cost to the state or the local law-enforcement agency of such processing and
77 administration.

78 I. Any individual required to undergo a background check pursuant to subsection A who is (i)
79 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) found to be the subject of a founded
80 complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day
81 center, family day home, or family day system described in subsection A of such conviction or finding.

82 J. Notwithstanding the provisions of subsection A, a background check shall not be required for any
83 individual who has completed a background check under the provisions of this section within the
84 previous five years, provided that (i) such background check was conducted after July 1, 2017; (ii) the
85 results of such background check indicated that the individual had not been convicted of any barrier
86 crime as defined in § 19.2-392.02 and was not the subject of a founded complaint of child abuse or
87 neglect within or outside the Commonwealth; and (iii) the individual is currently or has been, within the
88 previous 180 days, employed by or a volunteer at a child day center, family day home, family day
89 system, or child day program described in subsection A. ~~Prior~~ *Except as otherwise provided in*
90 *subsection A, prior* to hiring or allowing to volunteer any individual required to undergo a background
91 check pursuant to subsection A without the completion of a background check under the provisions of
92 subsection B, the child day center, family day home, family day system, or child day program shall,
93 upon the individual's written consent, obtain written certification from the Department or its designee
94 that such individual satisfies all requirements set forth in this subsection and is eligible to serve as an
95 employee or volunteer. If the individual meets all requirements set forth in this subsection and is eligible
96 to serve as an employee or volunteer at the child day center, family day home, family day system, or
97 child day program, the written certification shall also state the next date by which another background
98 check for such person shall be completed in accordance with subsection B. Such written certifications
99 shall not reveal the nature of any disqualifying barrier crime or founded complaint of child abuse or
100 neglect or any other information about the individual.